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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
Forty-eighth session

Summary record (partial)* of the 1076th meeting
Held at the Palais Wilson, Geneva, on Monday, 21 May 2012, at 10 a.m.

Chairperson: Mr. Wang Xuexian

Contents

* No summary record was prepared for the rest of the meeting.

The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Sixth periodic report of Canada (CAT/C/CAN/6; CAT/C/CAN/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Canada took places at the Committee table*.

2. **Mr. Kessel** (Canada), introducing his country's sixth periodic report (CAT/C/CAN/6), said that all the country's federal, provincial and territorial governments had worked together to produce the periodic report and the written replies to the Committee's list of issues. Civil society and Aboriginal organizations had also participated in drafting the report. All levels of government took their treaty obligations seriously, including their obligations under the Convention against Torture. The Convention was implemented under several instruments of domestic legislation, notably the Constitution, which included the Canadian Charter of Rights and Freedoms. Those legal instruments established an overarching framework for all government action, including the protection of the rights to life, liberty and security of the person, legal rights with respect to arrest or detention and the right not to be subject to cruel and unusual treatment or punishment, including torture.

3. The authorities were committed to the safe, secure and humane custody of detained persons. Canada was considered a world leader in that regard and the national standards for managing and delivering federal corrections programmes often exceeded internationally-accepted minimums. A robust oversight body monitored the rights of federal detainees and ensured that the corrections system operated in a fair, transparent and accountable manner. The majority of the recommendations in the 2007 Report of the Correctional Service of Canada Independent Review Panel had been implemented or were being put into action, with particular focus on enhancing offender accountability, enhancing correctional programmes and offenders' employment skills, eliminating drugs from institutions and modernizing physical infrastructure.

4. Canada was determined that it would not become a safe haven for persons involved in war crimes, genocide or crimes against humanity. It had demonstrated its commitment to strengthening accountability for such crimes through recent prosecutions of persons accused of committing genocide and crimes against humanity in Rwanda. Canada believed that, wherever possible, people accused of such crimes should face justice in the countries in which the crimes occurred, but when that was not possible, international courts and tribunals and other efforts to hold perpetrators accountable for serious international crimes could be used.

5. Turning to national security, he said his country was proud of its record in combating terrorism while respecting fundamental human rights standards and safeguards. To date, 14 people had been convicted of criminal offences under the Anti-terrorism Act, which had been drafted with a view to ensuring consistency with the Constitution and all Canada's international obligations. The Act was not emergency legislation and did not derogate in any way from the Convention against Torture. It amended the Criminal Code by creating several terrorism offences, which were subject to fair trial safeguards and to equality and non-discrimination guarantees. It had been upheld by domestic courts as consistent with constitutional protections.

6. Law enforcement personnel received training on the legal framework governing their operations, including legal protection against torture and cruel and unusual treatment or punishment. Police officers were subject to criminal and code of conduct investigations as well as the external review of public complaints. To his knowledge, there were currently

no disciplinary investigations into allegations of torture or cruel, inhumane or degrading treatment committed by Canadian law enforcement agents.

7. The 2009 Braidwood Inquiry Report had made recommendations relating to policies and procedures for the use of Conducted Energy Weapons, or taser guns, including standards for use, medical assistance, training, testing and research. It recommended that such weapons should not be deployed unless an individual's behaviour met the threshold of "causing bodily harm" or would "imminently cause bodily harm". In response to the Report, new national guidelines for the use of such weapons had been developed and approved. They provided guidance to jurisdictions and police services in developing their respective policies and practices and to date the provinces and territories, as well as the Royal Canadian Mounted Police, had taken steps to meet or exceed the guidelines.

8. Similarly, the Government had responded to the Arar Inquiry recommendations. In addition to a settlement, measures had been taken to improve interdepartmental cooperation on national security files, enhance safeguards on the sharing of information with other countries, implement more robust training activities for national security agencies and enhance consular services for Canadians abroad. The Government was also examining options for modernizing and strengthening the national security review framework, including creating a mechanism to facilitate inter-agency review of national security activities. While that work continued, a number of measures and other review mechanisms were already in place.

9. Internationally, the Government took its commitments to protect people at risk of persecution, including displaced populations, very seriously and had denounced regimes that violated the fundamental freedoms of their people, including those that engaged in torture. While the asylum system was renowned for its high standard of fairness and generosity, it was currently challenged by long waiting times for decisions, a significant backlog of claimants, a lengthy and complex post-claim process and slow removals. In 2010, the Government had introduced the Balanced Refugee Reform Act, which would improve the system by streamlining the processing and removal of unfounded claimants who abused the asylum system, while ensuring that all claimants continued to have access to a fair hearing. The Government had undertaken to welcome up to 14,500 refugees through its resettlement programme, and by 2013, would have resettled approximately 1 in 10 refugees resettled worldwide. The proposed legislative changes introduced by the Minister of Citizenship, Immigration and Multiculturalism in February 2012 represented two key protection goals – further strengthening the integrity of the asylum system and addressing concerns posed by human smuggling. The changes would also provide the legislative authority to set out the countries and territories whose foreign nationals would be required to provide biometric data when applying for a visitor or study visa or a work permit.

10. Migrant-smuggling had the potential to undermine the fundamental principle of State sovereignty and overwhelm protection institutions, violate domestic laws and circumvent established domestic processes. It facilitated organized crime and terrorism and cost a huge number of lives each year. In response, the Government had introduced recent legislation in order to provide immigration officials with better tools to properly determine the identity and admissibility of individuals who arrived in the context of "irregular arrivals". That was often the case with dangerous and illegal human-smuggling operations that enriched criminals and undermined his country's inviolable sovereignty and the integrity of the immigration system. Those measures continued to uphold Canada's international protection obligations, including the principle of non-refoulement.

11. The authorities would also gain increased powers to detain illegal or irregular migrants, until it could be determined whether or not they were legitimate refugees and if they posed a flight or security risk. That fulfilled the Government's paramount duty, which

was to protect the safety and security of the Canadian people, including protecting them from violent foreign criminals and terrorists and preventing the exploitation of generous social services, while still providing a refuge for those fleeing real persecution. In implementing the new measures, the Government would continue to uphold its obligations under the Convention, including the commitment not to expel, refouler or extradite a person to another State where there were substantial grounds for believing the individual would be in danger of being subjected to torture.

12. The Government took its reporting obligations seriously and, with its partners, had endeavoured to provide a comprehensive and timely response to the Committee's list of issues. However, the questions included in the list reflected the unfortunate delay between the submission of the sixth periodic report in 2008 and its consideration by the Committee. Canada was aware of the backlog of reports before all the human rights treaty bodies and had been actively involved in the treaty body strengthening process. The Government encouraged the Committee to modernize the reporting process, including by conducting videoconferences. It should refrain from asking questions that fell more squarely within other treaty bodies' mandates, such as general issues relating to violence against women or trafficking in persons.

13. **The Chairperson** welcomed the suggestions the State party had made regarding the Committee's coordination with the other treaty bodies. The delegation's comments and criticisms would be taken into account in the framework of the ongoing process of strengthening the treaty body system.

14. **Mr. Bruni** (Country Rapporteur) commended the State party on its replies to the Committee's list of issues prior to reporting (CAT/C/CAN/Q.6/Add.1), which contained a great deal of useful information. It was regrettable, however, that the Canadian authorities had taken three months to respond to the list. The Committee had received the 90-page document only a few days prior to the meeting and the delay had greatly impeded its preparatory work for the dialogue with the delegation, especially in light of the Committee's heavy workload for the current session.

15. The State party had pledged to ratify the Optional Protocol to the Convention on two occasions, in 2006 when it was a candidate for membership of the Human Rights Council and in 2009 in the context of the Universal Periodic Review. While the replies to the list of issues referred again in general terms to ongoing consultations on the subject, he would appreciate more precise and detailed information.

16. The security certificate process under the Immigration and Refugee Protection Act was a mechanism whereby the Government could detain and deport foreign nationals and other non-citizens living in Canada who were suspected of being a threat to national security. The process had been amended, following decisions by the Supreme Court in 2007, to provide suspects with a minimum of legal assistance through "special advocates" and to prevent their deportation to a country where they would be in danger of being tortured. However, the Immigration and Refugee Protection Act did not specify a maximum period of detention, which was merely subject to periodic review. As a result, they remained deprived of their liberty in Canada without a proper judgement. A final decision on their situation should, in his view, be taken as a matter of urgency.

17. According to the report, there had been five active security certificate cases at the end of 2007. According to the written replies and other public sources, three persons were still under house arrest and had been in that situation for up to 10 years. Summaries of confidential information had been provided to their "special advocates". He recommended that they should be informed of the full charges against them, since he doubted whether real justice could be conducted on the basis of summaries. Perhaps the State party should consider revising or even abolishing the security certificate procedure. After its visit to

Canada in June 2005, the United Nations Working Group on Arbitrary Detention had expressed grave concern about the procedure and had recommended that terrorism suspects should be detained under criminal law, with corresponding safeguards, and not under immigration law.

18. He noted from the report that an annual "in-custody death" internal report was prepared each year to identify trends in training needs and required enhancements of policy and procedures. The vast majority of in-custody deaths were apparently due to high-risk lifestyles such as drug and alcohol abuse, a statement which implied that such lifestyles were tolerated in custody. The written replies to the list of issues referred to measures put in place by the Correctional Service of Canada to help eliminate the flow of drugs entering penitentiary institutions. He asked whether there was any programme to assist detainees in changing their high-risk lifestyles and to reduce the incidence of death in custody. How many such cases had been registered in recent years?

19. According to the Office of the Correctional Investigator, which acted as Ombudsman for federally sentenced prisoners, the majority of Canadian prison buildings were relatively old. Five had been built between 1835 and 1900 and they had inadequate infrastructure for prisoners, especially those with some form of mental disability. He asked whether the Government had any plans to remedy the situation.

20. Another subject of particular concern was the use of solitary confinement in Canadian prisons. Disciplinary segregation could allegedly be imposed for a period up to 30 days, although medical experts agreed that, beyond 15 days, some of the harmful effects of segregation could be irreversible. Had the relevant authorities studied the issue with a view to reducing the maximum period of disciplinary segregation or perhaps abolishing it once and for all? Administrative segregation was reportedly applied not only to prisoners who were extremely dangerous but also to prisoners with serious mental disabilities. According to specialists and experts, that was not the right solution. A thorough study was perhaps necessary to find alternative solutions to segregation.

21. According to the report and the replies to the list of issues, exceptions to the prohibition of the expulsion and extradition of persons who would be at risk of being tortured in the country of destination were foreseen in the case of persons, such as particularly serious criminals, who represented a threat to the security of the State party. He pointed out that the prohibition of deportation of a person who would be in danger of being subjected to torture was absolute under article 3 of the Convention and that, according to article 2, paragraph 2, no exceptional circumstances could be invoked to justify such action. The State party should instead take the necessary legal or administrative measures to prosecute perpetrators of particularly serious crimes or to limit their activities, as appropriate, in order to protect the community. It could be argued that prosecutions and trials were costly, but the removal of criminals to a country where they might be tortured was certainly not a good solution. Diplomatic assurances were also inadequate since they were not legally binding.

22. According to the report and the replies to the list of issues, Canada had not deported anyone in recent years who, according to domestic procedures, would face a substantial risk of torture upon removal. However, paragraph 131 of the written replies admitted that the ambit of the exceptional circumstances in which a person could theoretically be removed in spite of the risk of torture in the country of destination remained undefined in Canadian law. Thirty-four persons had been deported for security reasons between January 2004 and December 2011. He enquired about their identity, the charges against them, the countries to which they had been deported and, if possible, their situation following deportation. The Committee had listed four cases in paragraph 14 of the list of issues, in which persons had been deported by Canada despite the Committee's request for interim measures, and had since been subjected to torture or ill-treatment. He asked what measures the State party

intended to put in place to prevent such dramatic situations from being repeated in the future.

23. According to the written replies, the Canadian Security Intelligence Service (CSIS) strongly opposed the mistreatment of any individual for any purpose and did not condone the use of torture or other unlawful methods in responding to terrorism and other threats to national security. However, a directive addressed by the Minister of Public Safety to the Director of CSIS on 28 July 2011 stated that, in exceptional circumstances, CSIS might need to share the information in its possession, including information from foreign entities that was probably derived through mistreatment, in order to mitigate a serious threat of loss of lives, injury, or substantial damage or destruction of property before it materialized. He asked how the Canadian authorities reconciled that instruction with its obligations under articles 2, 4 and 15 of the Convention. Experience had shown that information provided under torture or ill-treatment was highly likely to be incorrect and misleading and therefore ineffective in countering a serious threat to society.

24. According to paragraph 47 of the report, the inventory of cases involving criminal investigations of torture and other serious crimes had been re-examined and the number of files had been reduced. He asked how many files remained in the inventory and enquired about their content. Paragraph 49 referred to the prosecution of a Rwandan national, Désiré Munyaneza, accused of war crimes, genocide and other crimes against humanity. According to the written replies, he had been sentenced to life imprisonment in October 2009. Another Rwandan national, Léon Mugesera, accused of participation in genocide, had been extradited to Rwanda in January 2012. He asked why the Canadian authorities had opted for prosecution in the first case and extradition in the second for similar crimes against humanity perpetrated with a similar degree of responsibility.

25. According to NGOs, the Canadian Government had published a list of 30 individuals described as “suspected war criminals” in July 2011 and had asked the public for help in tracking them down so that they could be deported. If the information was correct, he wished to know who the suspects were, on what basis the list had been compiled and who had decided on such a procedure. Was deportation envisaged for all the suspects or might some of them be prosecuted in Canada? He pointed out that deportation might not only entail the risk of torture or ill-treatment in the country of destination but also impunity for criminal acts. Would those possibilities be taken into account when the decision on deportation was taken?

26. He would appreciate receiving the most recent information concerning a Canadian citizen, Mr. Omar Khadr, who had spent 8 years in the Guantánamo prison camp and had been sentenced in October 2010 to 8 additional years of imprisonment by a United States military tribunal for war crimes and terrorism. According to some sources, the sentence had been based on a confession obtained through torture. The case had been raised with the Canadian Government by the Special Rapporteur on torture. It appeared that Mr. Khadr, who was being held in solitary confinement, had been eligible for repatriation to a Canadian prison since October 2011. He asked whether the Canadian Government intended to repatriate him and whether it considered that his conviction as a “war criminal” was acceptable or whether a further inquiry was needed, especially with regard to the allegations of torture.

27. The section of the report on Quebec referred to legislation aiming at the social reintegration of offenders in the correctional system. The measures had entered into force in 2007. He would be interested to receive an assessment of their effectiveness.

28. Plans had been approved in 2007 for the construction, expansion, refurbishing and upgrading of prison infrastructures in Quebec over a 15-year period. The main objective was to reduce overcrowding. What progress had been made to date and what was the

current rate of occupancy in places of detention? He had been surprised to read that almost 40,000 persons had been admitted to detention facilities in Quebec each year during the period 2004–2007. As the number seemed quite high for a province with a population of about 8 million, he would appreciate any clarification that the delegation could provide.

29. According to the report, a new women's correctional facility located in the rural municipality of Headingley in the Province of Manitoba was expected to be completed by 2009. He asked whether that was the case. Noting that audio and video recording equipment was used in police buildings in British Columbia to prevent cases of ill-treatment, he asked whether the practice had yielded positive results and whether other provinces had taken or planned to take similar measures.

30. **Ms. Belmir** (Country Rapporteur), noting that Canada was a leading defender of human rights, said that certain questions needed to be raised, including with respect to the rule of law, the primacy of international human rights instruments over domestic law and the entitlements of sovereign States under international human rights law. She took issue with the assertion made in the opening statement that the Committee had raised questions that did not fall within the scope of its mandate. In fact, the Committee was duty-bound to address any issue involving the possibility of a risk of torture or ill-treatment.

31. She noted with concern that persons who entered Canada irregularly were subject to mandatory detention until their identity could be determined, considering that the process of identifying persons could often be very lengthy. Referring to paragraph 53 of the replies to the list of issues, she would like to know whether federal Ministry of Public Safety decisions to designate the entry of a person in Canada as an irregular arrival were subject to judicial review. She failed to understand the State party's assertion in the same paragraph that the use of such detention was neither a penalty nor a punitive measure, bearing in mind that detention meant the deprivation of liberty.

32. Stressing the importance of human rights training of police, she wondered why the report of the State party had placed such emphasis on training in the use of force. The replies mentioned that human rights training was also available to recruits, supervisors and senior officers, which seemed to suggest that such training was less important than training in the use of force. It was not clear why the human rights training available to prosecutors and the judiciary in Canada was not the same. In particular, why were judicial officers not subject to the same continuing legal education requirements as prosecutors?

33. Turning to the use of tasers, she said that such weapons had caused bodily harm and killed persons. She failed to understand how the State party could authorize the use of a weapon that had the potential to kill. It must be emphasized that the issue bore directly on the right to life.

34. She noted with concern that the Canadian Charter of Rights and Freedoms did not protect Canadian citizens interrogated in another country and drew attention to general comment No. 2 of the Committee. More information was needed on the use of "reasonable force" in disciplining children, particularly whether the State party intended to repeal Section 43 of its Criminal Code.

35. **Ms. Gaer** said that she had been disappointed by the delegation's remark in the opening statement that the matter of violence against women would be better addressed elsewhere, especially in the light of the important work done by Canada in that area. During the first 12 years of the Committee's existence, women had in fact been invisible. There had been no discussion of gender-based torture involving rape, domestic violence and trafficking in persons. The first step towards preventing further human rights violations must be to put an end to such invisibility. Despite the decrease in the prison overpopulation ratio in recent years, the prison population had in fact increased. She would appreciate an explanation for the increase in the number of incidents of inter-prisoner violence, measures

to prevent it and remedies provided to persons harmed in such incidents. The State party had indicated in its replies to the list of issues that the majority of correctional officers in women's detention centres were women. However, she wished to know what exactly was meant by majority and asked for a precise percentage. She noted with concern the high rate of incarceration, disappearance and killing of indigenous women in Canada, which recalled the phenomenon of the female homicides in Ciudad Juárez in Mexico. She also asked what measures were being taken to ensure that the police were treating such cases with the same seriousness as other similar cases. Further details were needed of the British Columbia inquiry into the murders and disappearances. There had been reports that the complainants had been provided with counsel without their consent and that there was no publicly funded counsel.

36. She would like to know the Government's position on the bill that had been introduced to provide redress for victims of international crimes and allow lawsuits to be brought against foreign States. She would be grateful for more information on the compensation provided in the well-known case of the Canadian photo journalist Zahra Kazemi, who had died as a result of being tortured in an Iranian prison. It would be useful to have an update on the status of the civil lawsuit filed by her son in Quebec against the Government of the Islamic Republic of Iran. She failed to understand how the State party reconciled the rejection of such civil lawsuits with its Justice for Victims of Terrorism Act.

37. **Ms. Sveaass** said that she would like further information on how recommendations made by treaty bodies were followed up and coordinated by the State party. She would also appreciate additional information on the Canadian Human Rights Commission and its role in coordinating and following up the various recommendations from the Committees. More information on the measures to strengthen the institution would also be useful. She concurred with previous speakers on the importance of effective remedies for victims of torture in accordance with article 14 of the Convention. The State party had provided information on its efforts at the rehabilitation but not the compensation of victims. She would welcome information on legislation to ensure that such compensation was available for victims of torture in particular.

38. Drawing the State party's attention to general comment No. 2, she asked whether it would consider amending its legislation to include acts of torture committed by non-State actors. The lack of specific legislation could result in incomplete investigations or inadequate penalties for such acts. She would appreciate an update on the follow-up to the internal inquiry into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, including the opportunities for obtaining redress. Would the State of Canada be issuing an official apology? She also wished to know the extent to which the report of the Commission of Inquiry into the actions of Canadian officials in relation to Maher Arar had been taken into account. She asked whether it was true that there were plans to abolish the position of Inspector General of the Canadian Security Intelligence Service and, if so, whether there were other bodies that would monitor the activities of the Service.

39. **Mr. Gaye**, referring to paragraph 29 of the replies to the list of issues concerning the right of detainees to contact family members, asked whether that right was extended to detainees who entered the country in a manner deemed to be irregular. As such persons were particularly vulnerable and required help from family members, it was important for them to enjoy such a right. He would like to know what follow-up was given to the six complaints related to issues of physical violence involving the Quebec Correctional Services, which were referred to in paragraph 124 of the replies to the list of issues. Turning to the training manual on victims of torture mentioned in paragraph 207, he asked for more specific details of the non-medical personnel who received such training, especially prison staff.

40. **Mr. Mariño Menéndez**, commending Canada on its exemplary human rights record, said that there had been no mention of trafficking in persons in the replies of the State party to the list of issues, despite the fact that such trafficking could involve the use of torture or ill-treatment. Instead the State party referred to laws concerning human smuggling and to persons who entered Canada irregularly. He would welcome further information on the diplomatic assurances regarding due process, detention conditions and the abolition of the death penalty for persons facing removal from Canada. He would also like to know whether Canada was considering a more integral part of the Inter-American System, as that would strengthen the human rights work of the System.

41. **Mr. Domah** said he would like to hear the views of the State party on the core concerns of the Committee, given that torture often took on many forms. He asked whether there was a general prohibition under criminal law against the use of evidence obtained by means of torture or whether the prohibition was restricted to the antiterrorism legislation of Canada. He also wished to know whether persons were precluded from using such evidence in civil cases.

42. **Mr. Togushi**, noting the various complaints mechanisms in the State party, asked what measures were envisaged to take a more active approach to monitoring the observance of human rights in places of deprivation of liberty. He wished to know whether the State party intended to sign or ratify the Optional Protocol to the Convention and to develop monitoring mechanisms other than the ones currently in place for all places of detention, without exception.

43. **The Chairperson**, speaking in his capacity as a Committee member, sought clarification of the meaning of the phrase used in the introductory statement "enhancing offender accountability". It had also been stated that police officers were subject to external reviews of public complaints. It was not clear what was meant by external review. He asked whether the segregation intervention referred to in the report and elsewhere was equivalent to solitary confinement. There existed two types of such segregation: administrative and disciplinary. While under the law disciplinary segregation must not exceed 30 days, there had been reports that, of the some 7,500 persons subject to segregation in places of detention on any given day, more than 15 per cent could be held for up to 120 days. The Committee considered even 30 days to be prolonged solitary confinement. He would appreciate an update into any investigations into the case of the young Polish man who had died as a result of being hit by a taser gun at the Vancouver International Airport in 2007. He would also like more information on the number of cases in which tasers were used by law enforcement officers and the results of any investigations into persons injured by the use of the weapon.

The discussion covered in the summary record ended at noon.